

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

AURORA COOPERATIVE)	
ELEVATOR COMPANY,)	
)	
Plaintiff,)	8:12CV230
)	
V.)	
)	
AVENTINE RENEWABLE ENERGY -)	ORDER
AURORA WEST, LLC, and AVENTINE)	
RENEWABLE ENERGY HOLDINGS,)		
INC.,)	
)	
Defendants.)	
)	

This matter is before the court on Plaintiff's Motion for Determination of Place of Trial ([filing 10](#)). For the reasons explained below, trial of this matter will be held in Lincoln, Nebraska.

BACKGROUND

This case involves a claim by Plaintiff for specific performance of a contract for the purchase of land in Hamilton County, Nebraska. Plaintiff filed this action in state district court in Hamilton County, Nebraska. ([Filing 1-1](#).) On July 3, 2012, Defendants removed the case to this Court. ([Filing 1](#).) At the time the notice of removal was filed, Defendants did not make a written request for place of trial. Therefore, because the notice of removal was filed in Omaha, Nebraska, it was placed on the Omaha trial calendar and assigned to Chief United States District Court Judge Laurie Smith Camp for disposition. *See* [NECivR 40.1](#)(c).

On July 13, 2012, Plaintiff filed this motion seeking a determination of place of trial. ([Filing 10](#).) Plaintiff requests that this action be litigated in Lincoln, Nebraska, as opposed to Omaha. Plaintiff argues that because Defendants did not request a place of trial in their notice of removal, the initial request was made by Plaintiff and that trial should occur in its location of choice. Plaintiff maintains that the convenience of the litigants, witnesses and attorneys

weigh in favor of trial taking place in Lincoln. Plaintiff contends that the majority of its employee witnesses and non-party witnesses reside in the Aurora or Lincoln area. Plaintiff also points out that its attorneys are located in Lincoln.

Defendants oppose Plaintiff's motion and contend that Omaha is more convenient for its witnesses and attorneys. Defendants assert that they are based in Dallas, Texas and that many of their witnesses likely reside in Dallas. Defendants' attorneys are located in Omaha and New York. Defendants assert that trial in Omaha is appropriate because it is easier to fly to Omaha than Lincoln and, additionally, that it would be improper to shift any inconvenience stemming from the place of trial to Defendants.

ANALYSIS

Having considered the convenience of the litigants, witnesses and counsel, the Court finds that the place of trial should be Lincoln, Nebraska. Plaintiff, a number of its witnesses and its attorneys are located in the Lincoln or Aurora area and there is no indication that Defendants have any Nebraska witnesses who would be particularly burdened by having trial in Lincoln. Although Defendants may have a few witnesses and attorneys residing outside of Nebraska, any inconvenience to these individuals in having to travel to Lincoln rather than Omaha would be slight. *See Williams Solutions, Inc. v. Cambian Net Markets, Inc., No. 8:09CV97, 2009 WL 982171, *2 (D. Neb. Apr. 13, 2009)* (stating that witnesses residing outside Nebraska "may just as conveniently travel to Lincoln as to Omaha, Nebraska").

Accordingly,

IT IS ORDERED that trial of this matter will take place in Lincoln, Nebraska.

DATED September 4, 2012.

BY THE COURT:

S/ F.A. Gossett
United States Magistrate Judge